

Matthews Zoning Code**SUPPLEMENTARY REGULATIONS****§153.076 STRUCTURES ABOVE HEIGHT LIMIT.**

(A) The following structures, features, or equipment are permitted above the height limit in any non-residential district and for non-residential uses in residential districts, when upon or extending through the roof of a building: roof structures for elevators, stairways, tanks, ventilating fans, air conditioning or similar equipment for the operation or maintenance of buildings, satellite dishes, and any device used for screening those structures and equipment. Any of these features must be set back from the edges of buildings or otherwise visually screened so that no more than one-half of their height is visible from the ground at any property line of the lot on which the building is located. Chimneys and skylights are also permitted above the height limit in these districts but are not subject to screening requirements.

(B) The following structures are permitted above the height limit (subject also to provisions at §153.061, 153.064, and 153.065, 153.143, and 153.172) on lots in the residential/institutional, office, business, and industrial districts which do not adjoin lots in any residential or rural district: steeples and clock or bell towers (either attached to the principal structure or as a separate freestanding structure associated by architectural design to the principal structure), flagpoles, smokestack or chimney separate from a building, water tanks, or similar structures. If this type of a structure is on a lot which adjoins a residential or rural district then the structure or that part of the structure above the height limit must be separated from any such adjoining lot line by a distance equal to its height measured from the ground. (See also §153.143(B)(1) for limits on flagpole height.)

(C) The structures listed in division (B) of this section are also permitted above the height limit in residential and rural districts. However, any part of such a structure which extends above the height limit must be separated from any adjoining property line by a distance equal to its height measured from the ground and must meet yard requirements of the zoning district. Maximum permitted height of these structures in any residential or rural district is 80 feet unless further restricted elsewhere in this chapter.

(D) Electric and telephone poles used to support electric power and other utility wire lines are permitted above the height limit in any district up to 60 feet. Electric transmission line towers are exempt from height limits or separation requirements.

('72 Code, § 1605) (Ord. 477, passed 2-8-88; Am. Ord. 643, passed 11-5-90; Am. Ord. 775, passed 4-12-93; Ord. 912 passed 1/27/97) Penalty, see § 153.999

§ 153.077 ACCESSORY STRUCTURES.

(A) Accessory structures will not be permitted in any required setback or side yard or within three feet of any exterior property line. If located on a corner lot, the accessory structure will not be nearer to the side street than the principal structure.

(B) In residential districts, no accessory structure shall be the greater of either i) taller than 20 feet in height or ii) exceed the height of the principal structure. The size of all accessory structures on a residentially-used lot shall not exceed fifty percent of the heated area of the principal structure.

(C) Underground accessory structures will be permitted within any required yard or setback in any district so long as any ventilating or other similar equipment extends no higher than 32 inches above the finished grade, is at least three feet away from all property lines, and does not cover more than 5% of the required yard area. Accessory structures such as piers and docks are also permitted in any required yard on lots which adjoin bodies of water. Canopies to cover gasoline pumps are permitted between the required and established front yards.

('72 Code, § 1606) (Ord. No. 477, passed 2-8-88; Ord. No. 1524, passed 12-11-06) Penalty, see § 153.999

§ 153.078 SETBACK REQUIREMENTS FOR MIXED USE LOTS AND ADJOINING LOTS IN DIFFERENT DISTRICTS

(A) If two lots are side by side facing the same street and are in different zoning districts, the setback for the lot in the less restrictive district must be increased by at least one-half of the difference between the different setback requirements.

('72 Code, § 1607) (Ord. 477, passed 2-8-88) Penalty, see § 153.999

(B) When two or more uses occupy the same building and those uses would normally have different setback or yard requirements, the greater of the setback or yard requirements will apply to the building. The off-street parking and loading requirements for each use must be met fully.

('72 Code, § 1608) (Ord. 477, passed 2-8-88; Ord. No. 1532, passed 1-8-07)) Penalty, see § 153.999

§ 153.079

(A) Sight triangle. The triangular area formed by a diagonal line connecting two points located on intersecting right-of-way lines, or a right-of-way line and the curb or edge of pavement of a private street or driveway, each point being

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35 feet from the intersection, and the two intersecting right-of-way lines (or right-of-way line and curb cut). A sight triangle may also be created with dimensions as determined by the State Department of Transportation.

(B) Within the triangles identified in subsection (A) above, and except as provided in subsection (C) below, no structure, sign, plant, shrub, tree, berm fence, wall, mailbox or object of any other kind shall be installed, constructed, set out or maintained so as to obstruct cross-visibility at a level between 30 and 72 inches above the level of the center of the street intersection.

(C) The restrictions of this section shall not apply to:

(1) Existing natural grades, which, by reason of natural topography, rises 30 or more inches above the level of the center of the adjacent intersection.

(2) Trees having limbs and foliage trimmed in such a manner that no limbs or foliage extend into the area between 30 and 72 inches above the level of the center of the abutting intersection.

(3) Fire hydrants, public utility poles, street markers, governmental signs, and traffic control devices. (Ord. No. 1532, passed 1-8-07)

§ 153.080 MODIFICATION OF SETBACK REQUIREMENTS.

When the principal building on a lot was nonconforming relative to setback at the time that this chapter was adopted, the setback requirements for any vacant lots on either side and within 100 feet of the nonconforming lot may be reduced by a distance equal to the average of the district requirement and the established nonconforming setback. ('72 Code, § 1609) (Ord. 477, passed 2-8-88) Penalty, see § 153.999

§ 153.081 CERTAIN EXTENSIONS INTO YARDS ALLOWED.

Architectural features such as cornices, eaves, steps, gutters, and fire escapes may project up to three feet into any required yard or beyond any required setback unless that feature would obstruct driveways which may be used for service or emergency vehicles. ('72 Code, § 1610) (Ord. 477, passed 2-8-88) Penalty, see § 153.999

§ 153.082 ALLEYS INCLUDED IN SIDE AND REAR YARDS.

Side yards and rear yards may be measured from the center line of public alleys which adjoin lots in residential districts. If the alley separates lots in residential from lots in nonresidential districts, this allowance will not apply. ('72 Code, § 1611) (Ord. 477, passed 2-8-88)

§ 153.083 SIDE AND REAR YARDS NEXT TO RAILROAD OR WATERFRONT.

In business and industrial districts, side yards and rear yards are not required adjacent to railroad rights-of-way. In all districts, side yards and rear yards are not required on the waterfront side of lots adjacent to the waterfront of impounded water. ('72 Code, § 1612) (Ord. 477, passed 2-8-88)

§ 153.084 LOCATION OF REQUIRED YARDS ON IRREGULAR LOTS.

The location of required front, side, and rear yards on irregularly shaped lots will be determined by the Zoning Administrator. The determination will be based on the spirit and intent of this chapter to achieve an appropriate spacing and location of buildings on individual lots. ('72 Code, § 1613) (Ord. 477, passed 2-8-88)

§ 153.085 SPECIAL YARD REQUIREMENTS FOR CORNER LOTS.

(A) If two corner lots are separated by a common rear lot line, the common side yards of the lots on the street must be at least the minimum for each district listed below.

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<i>District</i>	<i>Side Yard (Feet)</i>
R-9	8
R-12, R-12MF, R-15, R-15MF, R-20, R-VS	10
O-15, O-9	10
B-1, B-2, B-3, B-D, AU	10
I-1, I-2	10

(B) If the rear lot line of a corner lot is also the side lot line of an adjacent lot to the rear, then the side lot line of the corner lot on the street must be at least 50% of the required setback for the adjoining lot.

(C) If the side lot line of a corner lot abuts a thoroughfare, the side yard on the street side must be at least 45 feet in a lot used for residential purposes and at least 35 feet in a lot used for nonresidential purposes. ('72 Code, § 1616) (Ord. 477, passed 2-8-88; Am. Ord. 775, passed 4-12-93)

§ 153.086 REAR YARD REQUIREMENTS FOR THROUGH LOTS.

If both the front and rear yards of a lot abut public streets, the minimum rear yard will be the same as the minimum front yard for the district. Standards for yards, including rear yard, which abut thoroughfares shall also be contained in § 153.095.

('72 Code, § 1617) (Ord. 477, passed 2-8-88)

§ 153.087 DRIVEWAYS.

Driveways in an office, business, or industrial district may be used to provide access to uses in any of these districts.

('72 Code, § 1618) (Ord. 477, passed 2-8-88)

§ 153.088 MORE THAN ONE PRINCIPAL BUILDING PER LOT.

More than one principal nonresidential building may be located on a lot if an access road at least ten feet wide is maintained from a public street to each building for use by service and emergency vehicles. Unless a lesser standard is allowed elsewhere in this chapter, a minimum separation of four feet is required between separate buildings on the same lot. No more than one principal residential building may be located on a lot, except under the provisions for planned multi-family developments, mobile home parks, overnight camping trailer parks, and institutionalized residential facilities. In the case of attached single-family development where the side or rear lot lines match the center of common shared walls, the approved preliminary subdivision plat

indicating the proposed lot lines shall be used for building permit approval, although temporary or final Certificates of Occupancy shall not be issued until a final plat is approved and recorded. ('72 Code, § 1619) (Ord. 477, passed 2-8-88; Am. Ord. 871, passed 9-12-94) (Ord. 1127, passed 7-10-00) Penalty, see § 153.999

§ 153.089 VIBRATIONS.

No use in any district may operate in such a way that any inherent or recurring ground vibrations can be felt or detected at the property line without the use of instruments. ('72 Code, § 1620) (Ord. 477, passed 2-8-88) Penalty, see § 153.999

§ 153.090 NOISE.

Every use of land must be operated in such a way that regularly recurring noises are not disturbing or unreasonably loud and do not cause injury, detriment, or nuisance to any person of ordinary sensitivities. Every use in a business or industrial district which adjoins a rural, residential, or office district must be operated in such a way that any noise which may be detected by the human senses without instruments at the district boundary line is no louder than the noise which could be expected from uses permitted in those districts. In instances where more restrictive provisions of this chapter may apply, they will control.

('72 Code, § 1621) (Ord. 477, passed 2-8-88) Penalty, see § 153.999

§ 153.091 FENCES AND WALLS IN RESIDENTIAL DISTRICTS.

Within residential districts, no wall or fence may exceed four feet in height in any required front setback, or six feet in height within any required side or rear yard. Fence height shall be the vertical distance measured on the exterior side of the fence from the ground directly under the fence to the highest point of the fence, exclusive of capitals or ornamental projections which are no closer than five foot intervals. Where the ground elevation is inconsistent, the fence height along any unbroken run, up to 16 lineal feet, may be averaged, as long as no point along that unbroken run exceeds ten percent of the stated height limit. When applicable, the finished side of the fence shall face the exterior of the property. Fence capitals or ornamental projections on columns or posts may extend six inches above the actual fence height if they are spaced centerline to centerline between 5 feet and 12 feet apart. Capitals or ornamental projections may extend 12 inches above the actual fence height if they are spaced centerline to centerline greater than 12 feet apart, or may extend 18 inches above the actual fence height if they are spaced centerline to centerline greater than

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24 feet from any other capital or ornamental projection. This wall and fence height limitation does not apply to walls and fences constructed around electric and gas substations, telephone repeater stations or huts, sewage treatment plants, pressure regulator stations, buildings to house pumps and lift stations, and similar structures; communications towers and related equipment; or municipal reservoirs and water storage tanks. Walls and fences related to these uses may be subject to landscape screening provisions elsewhere in this chapter. ('72 Code, § 1624) (Ord. 477, passed 2-8-88; Ord. 912, passed 1/27/97; Ord. 1526, passed 1/8/07; Ord 1577, passed 7/23/07) Penalty, see § 153.999

§ 153.092 PARKING IN SETBACK PROHIBITED.

(A) No parking of vehicles will be permitted in the required setback on any lot in a residential district, unless the lot is used only for a single-family dwelling. The setback area may not be used for maneuvering space for parking spaces, but driveways connecting the parking spaces to the public street may cross the setback area.

(B) On corner lots, parking will not be permitted in the side yard closer to the side street than the distances specified below.

(1) For district R-9, no closer than 6 feet.

(2) For districts R-12, R-15, R-12MF, R-15MF, R-20, and R-VS, no closer than 10 feet. ('72 Code, § 1625) (Ord. 477, passed 2-8-88; Ord. 1127, passed 7-10-00) Penalty, see § 153.999

§ 153.093 CLUSTER DEVELOPMENT.

A cluster development is a tract of land of at least ten acres owned by a single person, firm, partnership, association, or corporation which is planned and developed as a single project. The development may take place all at once or over a period of time in stages, but always in accordance with one approved preliminary site plan as required in this section. Cluster developments may be established in Rural, R-9, R-12, R-12MF, R-15, R-15MF, R-20, R-VS, 0-9 and/or 0-15 districts in accordance with the standards below.

(A) Uses in a cluster development may only be those uses permitted in the district(s) in which the development is located.

(B) The dimensional requirements for cluster developments will be the same as for planned unit developments as listed in § 153.206(A).

(C)(1) The development area for a cluster development is computed by the following method:

Total Site Area (in square feet)

-minus-

16% of the total site area if located in R-9, 0-9, or 14% of the total site area if located in R-12, R-12MF, R-15, R-15MF, R-20MF Rural, or 0-15, R-20

-minus-

any areas designated for any nonresidential structures

-divided by-

conventional lot area requirement for the appropriate district.

(2) If the development falls into more than one zoning district, then the development area for each district must be computed separately. The development area density for the project must not exceed that which would normally be allowed for the various districts unless a density bonus is granted. Development density may not be transferred across zoning district boundaries.

(D) (1) A density bonus of up to 25% over the density normally allowed in the underlying zoning district may be approved by the Planning Board based on the provision of Common Open Space as listed below:

Density Bonus Scale

<i>% of Residential Area to Be Common Open Space</i>	<i>% Density Bonus</i>
10-19	4
20-29	8
30-39	11
40-49	15
50-59	18
60-69	22
70 or more	25

(2) The Planning Board must make a finding that the development will result in a significantly better environment than could be expected under the density normally allowed in the underlying district. Application for the density bonus must accompany the preliminary site plan submitted for approval.

(E) Cluster development must also comply with any applicable standards or requirements established in § 153.171.

(F) The provisions of the subdivision ordinance for sketch plans, preliminary and final plans must be followed for all cluster developments. A preliminary site plan must be submitted for review and approval. If it is found that the proposed development meets the standards for cluster

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development, the preliminary site plan and the final plat for the development may be approved.

('72 Code, § 1628) (Ord. 477, passed 2-8-88; Am. Ord. 875, passed 5-9-94) Penalty, see § 153.999

§ 153.094 EQUESTRIAN-ORIENTED SUBDIVISIONS.

Equestrian-oriented subdivisions are residential developments which are designed with particular emphasis placed on equestrian activities and which provide those facilities as non-profit community stables, riding rings, pastures and riding trails. In addition, private stables may be located on individual residential lots. Equestrian-oriented subdivisions are permitted in the Rural District and in all residential districts subject to the provisions listed below.

(A) All buildings and structures related to the care of horses and to the operation of the riding facilities must be located at least 100 feet from any residential property line at the perimeter of the development.

(B) Sites for community riding stables and similar facilities will be subject to the normal lot and yard requirements of the zoning district and division (A) of this section.

(C) Private stables for less than four horses on residential lots must be located in accordance with the requirements for accessory structures and division (A) of this section.

(D) Generally, riding trails should be located in the interior of the development and should not extend along adjoining residential property lines. Where a proposed trail is to be located along the exterior property line of the project, the trail must be a minimum of 30 feet wide with adequate fencing provided to confine all equestrian activities to the project.

(E) All stables and riding areas must be maintained according to the standards and requirements of the County Health Department.

(F) An equestrian-oriented subdivision may be established through the submission of the subdivision plans. The Board of Commissioners will approve the plans in accordance with provisions of this chapter, all applicable provisions of Chapter 152, and the additional standards listed below.

(1) Lots that will have private stables must be designated, and the general area in which those stables may be located must be indicated.

(2) All proposed community riding facilities, including community stables, riding rings, pastures, and

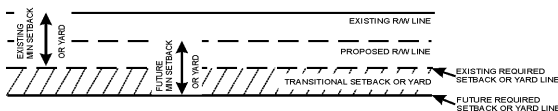
riding trails must be indicated on the plans. A written statement describing the proposed means of ownership and proposed program for maintenance of these facilities and a copy of the proposed maintenance program must be included. A copy of the proposed maintenance program will be kept on file at the County Building Standards office.

('72 Code, § 1630) (Ord. 477, passed 2-8-88; Am. Ord. 875, passed 5-9-94) Penalty, see § 153.999

Matthews Zoning Code**§ 153.095 SPECIAL REQUIREMENTS FOR LOTS ALONG THOROUGHFARES.****(A) Location for measurement of setbacks/yards.**

(1) The minimum yards or setbacks prescribed for each zoning district which abuts a proposed, but not yet constructed thoroughfare, shall be measured from the proposed right-of-way line established for each classification of thoroughfare as designated on the Thoroughfare Plan.

(2) A transitional setback or yard shall also be established for each zoning district which abuts a thoroughfare that has an existing right-of-way which is not as wide as the right-of-way established for that thoroughfare as designated by the Thoroughfare Plan. The transitional setback or yard area established for lots abutting thoroughfares can be used for any purpose allowed by the particular zoning district, except for (a) those uses which are prohibited in the required setbacks or yards elsewhere in this ordinance, or (b) to satisfy any minimum parking requirements if parking is not allowed in the setback or yard by the particular zoning district. The transitional setback or yard (the area between the existing required setback/yard and the line established when measured from the future widened right-of-way) may be used for parking which exceeds the minimum ordinance parking requirements. At the time that the proposed right-of-way is dedicated, or otherwise acquired for roadway purposes, the property owner shall be responsible for the removal of any uses constructed after July 10, 2000, which are within the transitional setback or yard that are not otherwise permitted in the setback or yard by the zoning district regulations. The property owner shall have one year from the date of right-of-way acquisition to remove any such uses. (Ord. 1127, passed 7-10-00)



(3) The standards of 153.095(A)(1) and (2) above will not apply to any development meeting one or more of the following circumstances:

(a) Any multi-building site or multi-lot development which has at least one building built or under construction, or has a valid unexpired building permit issued for at least one building prior to July 10, 2000.

(b) Any project which had a site plan not requiring any additional right-of-way approved prior to July 10, 2000 through a zoning action of the Board of Commissioners, or through a Highway Overlay Compliance Review, a Downtown Overlay Compliance Review, or Landscape Plan Review by Town Staff.

(4) An affected property owner shall have the right to request a variance to transitional setback or yard requirements to the Board of Adjustment. In granting relief, the Board of Adjustment may impose reasonable and appropriate conditions and safeguards to protect the interest of neighboring properties.

(B) When the rear yard of a through lot in any residential, office, business, or industrial district abuts a thoroughfare, the minimum rear yard depth must be at least 55 feet, except as noted in division (C) of this section.

(C) When the rear yard of a through lot in a Rural District abuts a thoroughfare and the lot is used for nonresidential purposes, the minimum rear yard depth must be at least 35 feet.

(D) When the side yard of a lot abuts a thoroughfare, the minimum side yard width must be at least 35 feet in all districts, except that the side yard for any development requiring planned multi-family approval must be at least 45 feet.

(E) Screening in accordance with § 153.075 must be provided along the rear yard and along the side yard of any lot which abuts a thoroughfare. This requirement is applicable in all districts. ("72 Code, § 1631) (Ord. 477, passed 2-8-88) Penalty, see § 153.999

§ 153.096 DRIVEWAY CONSTRUCTION; PERMITS.

Any person desiring to construct a driveway or other connection within the right-of-way of a public street must secure a permit prior to construction. Failure to secure a permit prior to construction may result in the removal of the driveways at the expense of the property owner and/or denial of access at that location. All driveways must conform to design and construction standards established by the Town or county. Driveways which connect to thoroughfares must also comply with the following requirements.

(Ord. 1562-A, passed 6-11-07; Ord 1587, passed 8-13-07)

(A) All lots or parcels are entitled to at least one driveway construction per street frontage on any street, except those along which access is otherwise limited or controlled. Requests for two driveways will be accepted only for lots with a street frontage of 350 feet or more. Requests for three driveways will be accepted only for lots with a street frontage of 600 feet or more. The artificial division of a single parcel or development site to increase the number of access points is not permitted.

(1) Additional driveway points may be possible on properties with 600 feet or more of street frontage, when there is a clear need to provide separate access points for

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different types of traffic, such as emergency vehicles, large tractor trailers, buses, and private passenger vehicles, to the same property, and/or when topography or road configuration cause an insufficient sight distance for the design speed of the roadway.

(2) When additional driveway locations are requested the following elements shall be submitted jointly to the Town Planning office, Town Public Works Department, County Transportation Engineer, and NCDOT (if applicable):

(a) A written explanation of the need to separate different types of vehicular traffic as it enters the site, including a description and anticipated number of different types of vehicles entering and existing the site, and the time of day any conflicts may be anticipated;

(b) A written explanation of the current road configuration, outlining the design speed of the road, all public or private vehicular access points within 300 feet of the proposed new driveway location, any curve that creates a reduction in sight distance for drivers, any topographic changes, any groves of trees, buildings, signs, other structures, or other visual impairments for traffic either entering or exiting the site which would indicate the need for additional driveways;

(c) A description of the pavement material and cross section for construction of each existing and proposed driveway;

(d) A site plan, drawn to scale, showing the location of all existing and proposed improvements on the site (building footprints, parking lots, curb lines, trash dumpster location, signs, landscaping, detention facilities, etc); any public or private driveways, streets or curb cuts (used or unused) within 300 feet of the site; location of any off-site structures, landscaping, etc., that may cause a reduction in sight distance; and topography lines at 10 foot intervals minimum, or at 4 foot intervals if visibility is indicated as restricted due to existing land contours or proposed grading.

(3) A request for any additional driveway shall be jointly submitted to the Town Public Works and Planning offices, County Transportation Engineer, and NCDOT (if applicable). If all involved agencies determine the need has been accurately defined, then a driveway permit for such additional driveways will be allowed.
(Ord. 1562-A, passed 6-11-07)

(B) No driveway may be located within 50 feet of the corner of two intersecting thoroughfare streets.

(C) No driveway may be located at the road right-

of-way within 20 feet of any property line. If a driveway exists on an adjoining lot, no new driveway may be located at the road right-of-way within 40 feet of the existing driveway either on that lot or an adjoining lot except where both property owners agree to have a single driveway for joint usage. This restriction does not apply to driveways for single-family, duplex, single family semi-attached, or single-family attached uses, which need only be ten feet from the property line at the road right-of-way. The restriction of 20 feet from a property line may be reduced for parcels within the Downtown Overlay when the parcel's lot width is insufficient for a driveway to be placed completely to the side of a building (existing, expanded or new) when the building's front wall dimension parallel to the road is at least 45% of the lot width, and the lot width is less than 100 lineal feet. Any request for reduction of this provision shall be written on the parcels' Downtown Overlay compliance site plan, and shall be approved as a part of the Downtown Overlay plan, subject to approval by the County Transportation Engineer and NCDOT (if applicable). (Ord. No. 1562-A, passed 6-11-07)

(D) Application for a driveway permit must be made to the Town Public Work's Department. If the use in question is required to submit a site plan for landscape or zoning overlay compliance to the Town Planning office, the information provided with that Plan must match the design and location used in applying for a driveway permit along with any other information necessary to evaluate the request. When a driveway will connect to a state-maintained road, the driveway permit will not be effective until it meets both Town and NCDOT standards.
(Ord. No. 1562-A, passed 6-11-07)

(E) Emergency access driveways may be created when such locations will allow for a necessary alternate access into a site specifically included as part of approved zoning conditions in a conditional zoning district. Emergency access driveways may be paved within the right-of-way, when required by NCDOT on state maintained roads. Emergency access driveways shall primarily use a solid subsurface with natural cover, such as concrete porous block subsurface and grass cover, and may be crossed with a removable or breakaway barricade, gate, bollards, or other method to prevent general public use.
(Ord.1304, passed 9-8-03)

(F) Where two or more single-family lots desire, or are required, to share driveway connections to a public street, an easement allowing cross access, ingress and egress shall be recorded, delineating the location and width of such shared vehicular driveway from its connection at the public right-of-way to its terminal point or points. Shared driveways for multiple single-family lots may have more than one public street connection, when such multiple connections are spaced no closer than 350 feet apart along any one road frontage.
(Ord. No. 1609-A, passed 2-11-08)

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(G) Nothing in this section exempts any person from complying with any regulations or requirements of the state regarding driveway connections to state roads. Nor does compliance with any or all state regulations exempt any person from the provisions of this chapter. In cases where these regulations or restrictions may overlap or conflict, the more restrictive provision will control. The granting of a driveway permit by the Town Public Works Department does not insure the granting of a state permit; however, the County Transportation Engineer will evaluate all applications under both sets of regulations and advise the applicant if a problem exists which may result in the rejection of the request. (Ord. 1562-A, passed 6-11-07)

(H) The requirements for a driveway permit as set forth above apply in all districts. ('72 Code, § 1632) (Ord. 477, passed 2-8-88) Penalty, see § 153.999

§ 153.097 SEPARABILITY.

If any section or specific provisions or standard of this ordinance or any zoning district boundary that now exists or may exist in the future is found by a court to be unconstitutional or invalid for any reasons, the decision will not affect the validity of this ordinance except the part in question. The other portions of the ordinance not affected by the decision of the court will remain in full force and be enforceable by any or all means authorized by law. ('72 Code, § 1700) (Ord. 477, passed 2-8-88)

§ 153.098 EFFECTIVE DATE.

The ordinance and the official zoning map accompanying it will take effect February 9, 1988. ('72 Code, § 1701) (Ord. 477, passed 2-8-88)

§153.100 APPLICATION OF S.W.I.M. (Surface Water Improvement and Management) STREAM BUFFERS

(A) *Purpose* The purpose of a stream buffer network is to ensure that the stream and adjacent lands will fulfill their natural functions. Stream systems are comprised of the stream and their drainage basins. Streams have the primary natural functions of conveying storm and ground water, storing floodwater and supporting aquatic and other life. Vegetated lands adjacent to the stream channel in the drainage basin serve as a "buffer" to protect the stream system's ability to fulfill its natural functions. Primary natural functions of the buffer include:

- (1) Protect water quality by filtering pollutants;
- (2) Provide storage for floodwaters;
- (3) Allow channels to meander naturally; and
- (4) Provide suitable habitats for wildlife.

(B) *Definitions.* For the purposes of this section, the following words and phrases shall be defined as specified below:

BEST MANAGEMENT PRACTICES (BMPs). A structural or nonstructural management based practice used singularly or in combination to reduce non-point source input to receiving waters in order to achieve water quality protection goals.

Non-structural BMPs. Non-engineered methods to control the amount of non-point source pollution. These may include land-use controls and vegetated buffers.

Structural BMPs. Engineered structures that are designed to reduce the delivery of pollutants from their source or to divert contaminants away from the water supply. These may include wet detention ponds, detention basins, grass swales and ditches, and infiltration devices.

BUFFER. A vegetated area through which storm water runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants.

BUFFER ZONES. Buffer widths are measured in three (3) zones in Figure 1: a) Stream Side Zone; b) Managed Use Zone; and c) Upland Zone. The buffer width is measured horizontally on a line perpendicular to the surface water, landward from the top of the bank on each side of the stream.

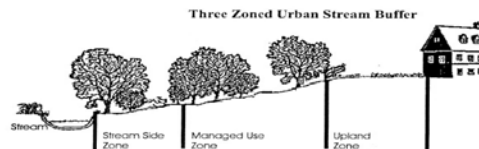


Figure 1

DRAINAGE BASIN. The area of land which drains to a given point on a body of water.

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FLOODWAY. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than the allowable surcharge (currently one foot).

FLOOD FRINGE. The land area located between the limits of the floodway and the maximum elevation subject to inundation by the base (1% chance) flood.

FLOODPLAIN. The low, periodically flooded lands adjacent to rivers and lakes. For land use planning purposes, the regulatory floodplain is usually viewed as all alongside a watercourse that would be inundated by the base (1% chance) flood; the floodway plus the flood fringe.

MITIGATION. Actions taken on-site and/or off-site to offset the effects of temporary or permanent loss of a buffer.

SITE SPECIFIC DEVELOPMENT PLAN. Any review process of a physical layout of a property which requires signed approval by a representative of the Town of Matthews. This may include, but is not limited to, any conditional zoning approvals, any site plan required as a condition of a previous zoning approval, Highway Overlay Compliance, Downtown Overlay Compliance, Landscape Plan, and subdivision preliminary plat.

TOP OF BANK. The landward edge of the stream channel during high water, bankfull conditions at the point where water begins to overflow onto the floodplain.

(C) *Applicability.*

(1) All properties shall comply with the buffer requirements as detailed in the Matthews Subdivision Ordinance at Section 152.33, and of this Section except those which, as of the effective date February 14, 2000, have previously secured a right to proceed by:

(a) Being subject to a recorded subdivision plat;

(b) Being subject to a preliminary subdivision plan approved by the Board of Commissioners prior to the effective date of this Section;

(c) Having otherwise secured a vested property right under state law.

(2) Redevelopment or expansion of structures, uses, or other development projects included in (C)(1), above, shall comply with the buffer requirements of this Section, however uses and structures previously approved and constructed in a buffer may remain.

(3) A site specific development plan amended by action of the Board of Commissioners subsequent to adoption of this Section shall comply, in its amended form, with the S.W.I.M. buffer requirements, however uses and structures previously approved for construction in a buffer may remain.

(D) *Buffer Standards*

(1) *Minimum Buffer Widths.* Minimum stream buffer widths vary based on the size of the upstream drainage basin, as described in the following table. Mecklenburg County's Geographic Information System will locate streams and delineate the size of drainage basins associated with each.

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Table of Minimum Buffer Widths by Basin Size and Buffer Zone

Area Designation	Stream Side Zone	Managed Use Zone	Upland Zone	Total Buffer Width each side of Stream	Notes
≥640 acres	30 feet	45 feet	Balance of floodway PLUS 100% of flood fringe, but no less than 25 feet	Floodway PLUS 100% of flood fringe, but no less than 100 feet	(1), (2)
≥300 acres	20 feet	20 feet	10 feet	50 feet	(1)
≥50 acres	20 feet	None	15 feet	35 feet	(1)

Notes:

(1) Buffer widths are measured horizontally on a line perpendicular to the surface water, landward from the top of the bank on each side of the stream.

(2) Floodplain and buffer calculations will be based upon the flood fringe and floodway encroachment lines, as locally adopted and as may be amended from time to time.

(2) *Buffer Description.* Buffer function, vegetation and use vary according to the different buffer zones and are described in the following table.

Table of Buffer Treatment by Buffer Zone

	Stream Side Zone	Managed Use Zone	Upland Zone	Notes
Function	Protect the integrity of the ecosystems	Provide natural filter; provide distance between upland development and the stream side zone	Prevent encroachment and filter runoff	
Vegetative Requirements	<u>Undisturbed (no cutting, clearing or grading).</u> If existing tree density is inadequate, reforestation is required.	<u>Limited clearing (no grading).</u> Existing tree density must be retained to a minimum of 8 healthy trees of a minimum 6 inch caliper per 1000 square feet. If existing tree density is inadequate, reforestation is encouraged.	<u>Herbaceous ground cover,</u> including grass, is allowed; maintenance of existing forest or reforestation is encouraged.	(1)

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Uses	<u>Very restricted.</u> Permitted uses limited to flood control structures and bank stabilization (where permitted) as well as installation of parallel or near perpendicular ($\geq 75^\circ$) water and sewer utilities and near perpendicular road crossings ($\geq 75^\circ$) with stabilization of disturbed areas	<u>Restricted.</u> Permitted uses limited to those allowed in the Stream Side Zone, as well as bikepaths and greenway trails up to 10 feet width.	<u>Restricted.</u> Permitted uses limited to those allowed in Stream Side and Managed Use Zones, as well as gazebos, non-commercial storage buildings less than 150 square feet, limited grading that does not change the functionality or extend of the floodplain, and storm water structural best management practices (BMPs) if approved as a condition of a buffer width variance.	(2), (3)
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Notes:

(1) When reforestation of disturbed buffers is required, tree planting shall be as specified in the Charlotte-Mecklenburg Land Development Standards Manual.

(2) Fill material cannot be brought into any required buffer. In the Upland Zone only, limited grading that does not change the extent or functional characteristics of the floodplain is permitted. Uses permitted in the buffer zones should be coordinated to ensure minimal disturbance of the buffer system. For example, if it is necessary to install utilities within the buffer, then if greenway trails are built they should follow these cleared areas instead of necessitating additional clearing.

(3) Notwithstanding the uses and structures permitted in the "Upland Zone", the stricter standards of floodway regulations, if applicable, shall apply.

(3) *Diffuse Flow Requirement.* Diffuse flow of runoff shall be maintained in the buffer by dispersing concentrated flow and reestablishing vegetation. Techniques for providing diffuse flow are specified in the Charlotte-Mecklenburg Land Development Standards Manual.

(a) Concentrated runoff from ditches or other manmade conveyances shall be diverted to diffuse flow before the runoff enters the buffer.

(b) Periodic corrective action to restore diffuse flow shall be taken by the property owner as necessary to impede the formation of erosion gullies

(4) *Ponds.* Ponds that intersect the stream channel shall have the same buffers as the original stream measured from the top of the bank of the pond. Buffer requirements do not apply to wet ponds used as structural BMPs.

(5) *Buffer Delineation.* The following buffer delineations are required:

(a) Stream and buffer boundaries including all buffer zones must be clearly delineated on all site specific plans for Board of Commissioner approval, on all construction plans, including grading and clearing plans, erosion and sediment control plans, and site plans.

(b) Buffer boundaries including all buffer

zones must be clearly marked on-site prior to any land disturbing activities. Where existing trees are to be preserved in a buffer zone, limits of grading shall maintain a minimum 20' separation from the base of each tree of 8" DBH or larger on the upland side of the buffer.

(c) The outside boundary of the buffer must be permanently marked on each parcel following the completion of grading activities and prior to occupancy.

(d) Separate buffer zones must be permanently marked at highway stream crossings.

(e) Buffer boundaries including the delineation of each buffer zone as well as all buffer requirements must be specified on all surveys and record plats, on individual deeds, and in property association documents for lands held in common.

(E) *Buffer Impacts Allowed.* The following buffer impacts are permitted, but design and construction shall comply with the specifications provided in the Charlotte-Mecklenburg Land Development Standards Manual for stabilization of disturbed areas to minimize negative effects on the quality of surface waters.

(1) Near perpendicular (75° or greater) road crossings for connectivity or transportation links.

(2) Near perpendicular (75° or greater) utility crossings as approved by Charlotte-Mecklenburg Utilities.

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(3) Parallel water and sewer utility installation as approved by Charlotte-Mecklenburg Utilities, where a logical and appropriate basis for the impact is demonstrated, where disturbance of the Stream Side Zone is minimized to the maximum extent practicable, and where guidelines for restoring vegetation within buffers disturbed as a result of parallel utility installation are met. These guidelines are specified in the Charlotte-Mecklenburg Land Development Standards Manual.

(4) Public paths and trails parallel to the creek outside the Stream Side Zone and near perpendicular stream crossings in any zone. Pathways must use existing and proposed utility alignments or previously cleared areas and minimize tree cutting to the maximum extent practicable. To the extent possible, pathways shall preserve existing drainage patterns and avoid drainage structures that concentrate storm water.

(5) Incidental drainage improvements/repairs for maintenance.

(6) Individual pedestrian paths connecting homeowners to the stream in the form of narrow, pervious footpaths with minimal tree disturbance.

(7) New domesticated animal trails (farming) where existing trails are lost as a result of action beyond the farmer's control. Stream crossings should be constructed to minimize impacts to the Stream Side Zone and be maintained with fencing perpendicular to and through the buffer to direct animal movement.

(8) Mitigation approved by a state or federal agency acting pursuant to Sections 401 or 404 of the federal Clean Water Act.

(F) *Appeals and Variances*

(1) *Appeals.* An appeal to reverse or modify the order, decision, determination, or interpretation of the Zoning Administrator shall comply with the requirements of Section 153.285 through 153.291.

(2) *Variances*

(a) When a difficulty or hardship would result from adherence to the buffer width requirements and/or buffer treatment standards during preliminary subdivision plat stage, a request for subdivision variance may be submitted to the Matthews Planning Board in compliance with the procedures of the Matthews Subdivision Ordinance at Sections 152.33(F)(2) and 152.06(B). This will not be considered a zoning variance issue, in order that the same request does not have to be heard by two separate bodies.

(b) When a difficulty or hardship would result from adherence to the application of all S.W.I.M. buffer requirements listed in this Section, and no subdivision process is involved, a request for zoning variance may be submitted to the Matthews Board of Adjustment as outlined at Section 153.287(C). One or more mitigation factors listed in the Subdivision Ordinance at Section 152.33(F)(3) should be utilized in any zoning variance request on S.W.I.M. buffer regulations. The applicant for such zoning variance shall provide with the completed request form, as a part of the required submission process, a written report from the Town Public Works Director or his designee, outlining any recommendations and preferred mitigation techniques as may be appropriate.

(G) *Posting of financial security required.* When structural BMPs (wet detention ponds and other BMPs) are approved for mitigation of a buffer disturbance, the approval will be subject to the owner filing a surety bond or letter of credit or making other financial arrangements which are acceptable to the Mecklenburg County Department of Environmental Protection, in a form which is satisfactory to the County Attorney, guaranteeing the installation and maintenance of the required structural BMPs until the issuance of certificates of occupancy for seventy-five percent (75%) of all construction which might reasonably be anticipated to be built within the area which drains into the BMPs, allowing credit for improvements completed prior to the submission of the final plat. At such time that this level of occupancy is achieved, written notice thereof must be submitted by the owner to the Mecklenburg County Department of Environmental Protection. The owner must also verify the adequacy of the maintenance plan for the BMPs, including the necessary financing to support the proposed maintenance practices. The Mecklenburg County Department of Environmental Protection will inspect the structural BMPs and verify the effectiveness of the maintenance plan; if both are found to be satisfactory, the department will notify the owner within 30 days of the date of notice.

(H) *Maintenance responsibilities for structural BMPs - Civil Penalties.* Maintenance of all structural BMPs will be the responsibility of the property owner or his designee. Any person who fails to maintain the required BMPs in accordance with the approved maintenance plan will be subject to a civil penalty of not more than \$500. Each day that the violation continues shall constitute a separate violation. No penalties shall be assessed until the person alleged to be in violation has been notified in writing of the violation by registered or certified mail, return receipt requested, or by other means which are reasonably calculated to give actual notice. The notice shall describe the nature of the violation with reasonable particularity, specify a reasonable time period within which the violation must be corrected, and warn that failure to correct the violation within the time period will result in assessment of a civil penalty or

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other enforcement action. (Ord. 1123, passed 2-14-00)

§153.101 STORM WATER COLLECTION AND DRAINAGE

(A) Purpose. The purpose of this section is to control the peak flow of less-common storm events and should be used in conjunction with the Post Construction Ordinance, when it also applies, to any parcel of land.

(B) Plan required. No development or use of land that involves or would create more than 20,000 square of impervious ground cover, shall be permitted without the submission and approval of a storm water management plan. Division of a parcel on or after July 10, 2000 into two or more parcels that, when combined, would create impervious surface areas of 20,000 or more square feet shall be required to provide a storm water management plan for the combined total built-upon surface. No certificates of occupancy or building permits for such development shall be issued until the storm water management plan is approved by the County Engineer and/or Town Engineer, whichever is appropriate. Built-upon ground cover in existence prior to July 2, 1979, and not altered or removed after that date, shall not be used in measuring the 20,000 square feet.

(C) Contents of a storm water management plan. The plan required for approval in 153.101 (B) shall include: a site plan showing existing and proposed buildings or other built-upon impervious surfaces; existing on-site and adjacent storm water drainage facilities; site construction plans, grading plans, and proposed storm water management system; and any other appropriate information requested by the Town or County Engineer. Storm water facilities shall be required to control the peak runoff release rate for both the 2-year and 10-year 6-hour storms, with an emergency overflow capable of safely discharging flow from the 50-year 24-hour storm event. All storm water management systems shall conform to the standards and specifications as provided in the Charlotte-Mecklenburg Storm Water Design Manual (latest revision), Charlotte-Mecklenburg BMP Design Manual (latest revision), Mecklenburg County Land Development Standards Manual (latest revision), or the more restrictive of any standards that conflict.

(D) Plan approvals. Neither the Town Engineer nor the County Engineer shall approve a storm water management plan if the built-upon ground cover proposed in the plan would increase the peak level of the storm water runoff from the site for both the 2-year and 10-year 6-hour storms, unless the storm water management plan identifies measures to control and limit runoff to peak levels as detailed in 152.101(C) no greater than would occur from the site if left in its existing condition. Furthermore, if documented downstream flooding concerns exist, the storm water management plan shall not be approved if the built-upon ground cover proposed in the plan would increase the peak

level of the storm water runoff from the site for both the 2-year and 10-year 6-hour storms, or less common storms at the discretion of the "Town or County Engineer, unless the storm water management plan identifies measures to control and limit runoff to peak levels for such storms no greater than would occur from the site if left in its natural, undeveloped, good condition; or, if currently undeveloped, its existing condition.

(E) Requirement waiver. The Town Engineer may waive any requirements under this section when storm water from the site would drain via an approved, permanent easement recorded at the Mecklenburg County Register of Deeds, or directly to a FEMA flood plain when within the same parcel of land. A written request for waiver shall be submitted to the Town Engineer which must be supported by a downstream flood analysis using the criteria specified in Chapter 3, Section 5 of the Charlotte-Mecklenburg BMP Design Manual (latest revision). In order to grant a waiver, the Town Engineer shall determine that the supplied flood analysis provides sufficient documentation that a waiver of storm water detention will not create increased flooding potential at, above, or below the subject location.

(F) Conflict of Laws. This section is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law, including the Post construction Ordinance. The requirements of this section are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this section imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

(G) Inspections. Inspections shall be in accordance with the procedures outlined in the Matthews Subdivision Ordinance at 152.60.

(Ord. 1127, passed 7-10-00; Ord. 1676, passed 3-9-09)